



INTEROFFICE MEMO

Gary Grief, Executive Director Tom Hanson, Charitable Bingo Operations Director

To: Robert G. Rivera, Chairman
Cindy Fields, Commissioner
Mark A. Franz, Commissioner
Erik C. Saenz, Commissioner
Jamey Steen, Commissioner

From: Bob Biard, General Counsel *RB*

Date: October 1, 2020

Re: Consideration of the Status and Possible Approval of Orders in Enforcement Cases

The Legal Services Division staff recommends that the Commission approve each of the proposed orders presented under this item.

Commission Order No. 21-0002

Date: OCTOBER 1, 2020

IN THE MATTER OF

**THE REVOCATION OF CERTAIN
LOTTERY RETAILER LICENSES**

§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER OF THE COMMISSION

During an open meeting in Austin, Texas, the Texas Lottery Commission (Commission) heard the license revocation cases listed on Attachment A hereto, in which the Texas Lottery Ticket Sales Agent (Respondent) in each referenced case did not appear at the scheduled hearing before the State Office of Administrative Hearings (SOAH) to respond to the allegations set forth in the Commission's notice of hearing.

I. Findings of Fact

1. Timely and adequate notice of the hearings in the referenced cases before SOAH was provided to each Respondent, pursuant to Tex. Gov't Code §§ 2001.051 and 2001.052, and 1 Tex. Admin. Code §§ 155.401 and 155.501(b). Each notice of hearing included a disclosure in at least 12-point, bold-face type, that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against the party that fails to appear at hearing.

2. After timely and adequate notice was given in each case, each case was heard by a SOAH Administrative Law Judge (ALJ). In each case, the Respondent did not appear at the hearing.

3. The Commission, by and through its attorney of record, filed a motion to dismiss each of the referenced cases from the SOAH docket and to remand each case to the Commission for informal disposition, in accordance with Tex. Gov't Code §2001.058(d-1) and 1 Tex. Admin. Code §155.501(d).

Commission Order No. 21-0002

Date: OCTOBER 1, 2020

4. The ALJ conditionally dismissed the referenced cases from the SOAH docket and remanded these cases to the Commission for informal disposition under Tex. Gov't Code §2001.056, provided the Respondent in each case did not file a motion to set aside the default within 15 days from the date of the ALJ's Order Remanding Case to Commission.

5. In each case, Respondent did not file a motion to set aside the default within 15 days from the date of the ALJ's Order.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to Tex. Gov't Code §466.155 and 16 Tex. Admin. Code Chapter 401.

2. The Respondent in each of the cases listed on Attachment A violated the State Lottery Act and the Commission's Rules as set forth in the Commission's notice of hearing applicable to such Respondent. Specifically, each Respondent failed to deposit money due to the State received from lottery ticket sales under the State Lottery Act, in violation of Tex. Gov't Code §466.351 and 16 Tex. Admin. Code §§ 401.351 and 401.352.

3. The relief sought by the Commission Staff is fair, reasonable, and adequately protects the public.

III. Order

NOW, THEREFORE, IT IS ORDERED that, after review and due consideration of the administrative record, each of the cases listed on Attachment A hereto, which is incorporated into this Order for all purposes, is hereby disposed by default, and:

1. All allegations set forth in each notice of hearing in the cases listed on Attachment A are deemed admitted; and

Commission Order No. 21-0002

Date: OCTOBER 1, 2020

2. The Texas Lottery Ticket Sales Agent License for each Respondent in the cases listed on Attachment A is hereby revoked.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 1ST day of OCTOBER 2020.

Entered this 1ST day of OCTOBER 2020.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 21-0002

Date: OCTOBER 1, 2020

ATTACHMENT A

TAB NO.	SOAH DOCKET NO.	TICKET SALES AGENT NAME	TICKET SALES AGENT ADDRESS	LOTTERY LICENSE NO.
A.	362-20-3672	Aubia Mart Inc. d/b/a Express Mart #5	258 Barrett Place San Antonio, TX 78225	179778
B.	362-20-3815	Farida Inc. d/b/a Icebox 4482	26026 Southwest Fwy. Rosenberg, TX 77471	156623

Commission Order No. 21-0003

Date: OCTOBER 1, 2020

Case No. 2020-445

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
BASAM Y. FARIS	§	
D/B/A BOB'S MEAT AND GROCERY	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 121723	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Texas Lottery Commission (Commission) and Basam Y. Faris d/b/a Bob's Meat and Grocery (Bob's Meat and Grocery) make the following Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, and enter into this Consent Order.

AGREED FINDINGS OF FACT

1. Bob's Meat and Grocery holds Texas Lottery Ticket Sales Agent License No. 121723.
2. Basam Y. Faris is the owner of Bob's Meat and Grocery, which is located at 509 21st St., Galveston, TX 77550.
3. On January 28, 2020, Mr. Faris presented three winning Texas Lottery tickets with prizes totaling \$6,100 to the Houston Claim Center for payment. Based on an internal review, the Commission initiated an investigation into Bob's Meat and Market.
4. On February 24, 2020, a Commission investigator presented a Texas Lottery scratch ticket with a prize value of \$1,000 for validation at Bob's Meat and Grocery. Mr. Faris offered to purchase the scratch ticket from the investigator for \$600.

AGREED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Tex. Gov't Code ch. 466 (State Lottery Act) and 16 Tex. Admin. Code ch. 401.

2. Bob's Meat and Grocery is obligated to follow the provisions of the State Lottery Act and the Commission rules to maintain its Texas Lottery Ticket Sales Agent License.

3. Tex. Gov't Code §466.310(a) states:

A person commits an offense if the person:

- (1) induces another person to assign or transfer a right to claim a prize;
- (2) offers for sale the right to claim a prize; or
- (3) offers, for compensation, to claim the prize of another person.

4. Tex. Gov't Code §466.402(b) states:

The payment of a prize in an amount of \$600 or more may be made only by the director.

5. 16 Tex. Admin. Code §401.158 states, in pertinent part:

(b) Without limiting the commission's ability to consider factors listed in §401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

...
(33) licensee:

- (A) induces another person to assign or transfer a right to claim a prize;
- (B) initiates or accepts an offer to sell the right to claim a prize;
- (C) initiates or accepts an offer of compensation from another person to claim a lottery prize, or
- (D) purchases a lottery ticket from a person who is not a licensed lottery retailer.

6. 16 Tex. Admin. Code §401.360 states:

Retailers may pay any lottery prize of less than \$600, after complying with established validation procedures. However, if a retailer validates a ticket of up to \$600, that retailer shall pay the prize amount on the ticket. Prizes of \$600 or more shall be paid by the Texas Lottery by mail or at a designated lottery claim center.

7. 16 Tex. Admin. Code §401.366 states:

Each retailer agrees to operate in a manner consistent with the State Lottery Act, applicable federal laws, Texas laws, local ordinances, with all terms and conditions related to the retailer's license, with all requirements set forth in the most recent Retailer Manual, the rules and regulations promulgated by the commission, and with his/her or its license agreements with the Texas Lottery.

8. The Texas Lottery Ticket Sales Agent License of Bob's Meat and Grocery is subject to suspension or revocation pursuant to Tex. Gov't Code §466.155(a)(5), as a result of Bob's Meat and Grocery's violation of Tex. Gov't Code §§ 466.310(a) and 466.402(b), and 16 Tex. Admin. Code §§ 401.158(b)(33), 401.360, and 401.366.

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Bob's Meat and Grocery agrees to these terms, acknowledges understanding them, and waives all rights to procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to the right to notice of hearing, a formal hearing, a proposal for decision, a rehearing, and any right to seek judicial review of the Order.

2. The effective date of this Memorandum of Agreement and Consent Order shall be the date it is signed by the Commission.

3. Bob's Meat and Grocery agrees that, as a result of its violation of Tex. Gov't Code §§ 466.310(a) and 466.402(b), and 16 Tex. Admin. Code §§ 401.158(b)(33), 401.360, and 401.366, its Ticket Sales Agent License will be suspended for a period of ninety (90) consecutive days. The suspension period will begin within seven (7) days from the date this Memorandum of Agreement and Consent Order is signed by the Commission. During the period of suspension, Bob's Meat and Grocery agrees that it will not sell Texas Lottery tickets of any kind, will not validate Texas Lottery tickets, and will not pay lottery prizes to customers.

4. During the entire period of suspension hereunder, Bob's Meat and Grocery is required to post a notice of suspension in the form and at the location prescribed by the Commission, visible to store customers, in the same area where Bob's Meat and Grocery's Ticket Sales Agent License is posted.

5. Bob's Meat and Grocery agrees this Memorandum of Agreement and Consent Order applies only to the facts and circumstances stated herein. The Commission reserves the right to take additional disciplinary action, up to and including suspension or revocation of Bob's Meat and Grocery's Ticket Sales Agent License, for any further violations of the State Lottery Act or Commission rules.

6. Bob's Meat and Grocery acknowledges and agrees that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and the Agreed Conclusions of Law contained herein, may be admitted in any future administrative action initiated against it by the Commission.

7. Bob's Meat and Grocery agrees that if, after a formal hearing on the sole issue of compliance with the Memorandum of Agreement and Consent Order, it is found that Bob's Meat and Grocery has failed to comply with the terms of the Memorandum of Agreement and Consent Order, disciplinary action shall be taken against Bob's Meat and Grocery, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

8. Bob's Meat and Grocery agrees to provide all active and settled tickets to the Commission or to an IGT representative on or before the date the suspension begins. It further agrees that these active tickets will settle on the date the suspension begins, and Bob's Meat and Grocery will be charged for tickets sold on or before that date. Bob's Meat and Grocery will be credited for any tickets that have been paid for in previous sweeps and that are returned to and received by the Commission on or before the date the suspension begins.

AGREED AS TO FORM AND SUBSTANCE:

Basam Y. Faris
d/b/a Bob's Meat and Grocery

Texas Lottery Commission
Lottery Operations Division

By:

Basam Y. Faris 9/15/20
Basam Y. Faris DATE
Owner

By:

Ryan S. Mindell 9-15-2020
Ryan S. Mindell DATE
Director

Commission Order No. 21-0003

Date: OCTOBER 1, 2020

Case No. 2020-445

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
BASAM Y. FARIS	§	
D/B/A BOB'S MEAT AND GROCERY	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 121723	§	LOTTERY COMMISSION

CONSENT ORDER

NOW, THEREFORE, IT IS ORDERED by the Texas Lottery Commission (Commission), based on the above Agreed Findings of Fact, Conclusions of Law and Memorandum of Agreement, which are hereby adopted and incorporated by reference as if fully set out and separately stated herein, as follows:

(1) IT IS ORDERED by the Commission that, in lieu of revocation of Basam Y. Faris d/b/a Bob's Meat and Grocery's (Bob's Meat and Grocery) Texas Lottery Ticket Sales Agent License, the license is suspended for a period of ninety (90) consecutive days. The suspension period will begin within seven (7) days from the date this Consent Order is signed by the Commission. During the period of suspension, Bob's Meat and Grocery shall not sell Texas Lottery tickets of any kind, shall not validate Texas Lottery tickets, and shall not pay lottery prizes to customers.

(2) IT IS FURTHER ORDERED by the Commission that, during the entire period of suspension, Bob's Meat and Grocery shall post a notice of suspension, in the form and at the location prescribed by the Commission, visible to store customers, in the same area where Bob's Meat and Grocery's Texas Lottery Ticket Sales Agent License is posted.

Commission Order No. 21-0003

Date: OCTOBER 1, 2020

(3) IT IS FURTHER ORDERED by the Commission that if, after a formal hearing on the sole issue of compliance with this Consent Order, it is found that Bob's Meat and Grocery has failed to comply with the terms of this Order, disciplinary action shall be taken against Bob's Meat and Grocery, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

(4) IT IS FURTHER ORDERED by the Commission that Bob's Meat and Grocery shall provide all active and settled tickets to the Commission or to an IGT representative on or before the date the suspension begins, that these active tickets will settle on that date, and Bob's Meat and Grocery will be charged for the tickets sold on or before that date. Bob's Meat and Grocery will be credited for any tickets that have been paid for in previous sweeps and that are returned to and received by the Commission on or before the date the suspension begins.

Commission Order No. 21-0003

Date: OCTOBER 1, 2020

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 1ST day of OCTOBER, 2020.

Entered this 1ST day of OCTOBER, 2020.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 21-0004

Date: OCTOBER 1, 2020

Case No. 2020-447

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
ALVIN FM LLC	§	
D/B/A ALVIN FOOD MART #2	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 176438	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Texas Lottery Commission (Commission) and Alvin FM LLC d/b/a Alvin Food Mart #2 (Alvin Food Mart) make the following Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, and enter into this Consent Order.

AGREED FINDINGS OF FACT

1. Alvin Food Mart holds Texas Lottery Ticket Sales Agent License No. 176438.
2. Nai L. Lo is the owner of Alvin Food Mart, which is located at 8332 S. Highway 35, Alvin, TX 77511.
3. On December 18, 2019, a Commission investigator presented a Texas Lottery scratch ticket with an apparent prize of \$1,000 for validation at Alvin Food Mart. Nai L. Lo offered to purchase the scratch ticket from the investigator for \$700.

AGREED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Tex. Gov't Code ch. 466 (State Lottery Act) and 16 Tex. Admin. Code ch. 401.
2. Alvin Food Mart is obligated to follow the provisions of the State Lottery Act and the Commission rules to maintain its Texas Lottery Ticket Sales Agent License.

3. Tex. Gov't Code §466.310(a) states:

A person commits an offense if the person:

- (1) induces another person to assign or transfer a right to claim a prize;
- (2) offers for sale the right to claim a prize; or
- (3) offers, for compensation, to claim the prize of another person.

4. Tex. Gov't Code §466.402(b) states:

The payment of a prize in an amount of \$600 or more may be made only by the director.

5. 16 Tex. Admin. Code §401.158 states, in pertinent part:

(b) Without limiting the commission's ability to consider factors listed in §401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

...

(33) licensee:

- (A) induces another person to assign or transfer a right to claim a prize;
- (B) initiates or accepts an offer to sell the right to claim a prize;
- (C) initiates or accepts an offer of compensation from another person to claim a lottery prize, or
- (D) purchases a lottery ticket from a person who is not a licensed lottery retailer.

6. 16 Tex. Admin. Code §401.360 states:

Retailers may pay any lottery prize of less than \$600, after complying with established validation procedures. However, if a retailer validates a ticket of up to \$600, that retailer shall pay the prize amount on the ticket. Prizes of \$600 or more shall be paid by the Texas Lottery by mail or at a designated lottery claim center.

7. 16 Tex. Admin. Code §401.366 states:

Each retailer agrees to operate in a manner consistent with the State Lottery Act, applicable federal laws, Texas laws, local ordinances, with all terms and conditions related to the retailer's license, with all requirements set forth in the most recent Retailer Manual, the rules and regulations promulgated by the commission, and with his/her or its license agreements with the Texas Lottery.

8. The Texas Lottery Ticket Sales Agent License of Alvin Food Mart is subject to suspension or revocation pursuant to Tex. Gov't Code §466.155(a)(5), as a result of Alvin Food

Mart's violation of Tex. Gov't Code §§ 466.310(a) and 466.402(b), and 16 Tex. Admin. Code §§ 401.158(b)(33), 401.360, and 401.366.

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Alvin Food Mart agrees to these terms, acknowledges understanding them, and waives all rights to procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to the right to notice of hearing, a formal hearing, a proposal for decision, a rehearing, and any right to seek judicial review of the Order.

2. The effective date of this Memorandum of Agreement and Consent Order shall be the date it is signed by the Commission.

3. Alvin Food Mart agrees that, as a result of its violation of Tex. Gov't Code §§ 466.310(a) and 466.402(b), and 16 Tex. Admin. Code §§ 401.158(b)(33), 401.360, and 401.366, its Ticket Sales Agent License will be suspended for a period of ninety (90) consecutive days. The suspension period will begin within seven (7) days from the date this Memorandum of Agreement and Consent Order is signed by the Commission. During the period of suspension, Alvin Food Mart agrees that it will not sell Texas Lottery tickets of any kind, will not validate Texas Lottery tickets, and will not pay lottery prizes to customers.

4. During the entire period of suspension hereunder, Alvin Food Mart is required to post a notice of suspension in the form and at the location prescribed by the Commission, visible to store customers, in the same area where Alvin Food Mart's Ticket Sales Agent License is posted.

5. Alvin Food Mart agrees this Memorandum of Agreement and Consent Order applies only to the facts and circumstances stated herein. The Commission reserves the right to take additional disciplinary action, up to and including suspension or revocation of Alvin Food

Mart's Ticket Sales Agent License, for any further violations of the State Lottery Act or Commission rules.

6. Alvin Food Mart acknowledges and agrees that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and the Agreed Conclusions of Law contained herein, may be admitted in any future administrative action initiated against it by the Commission.

7. Alvin Food Mart agrees that if, after a formal hearing on the sole issue of compliance with the Memorandum of Agreement and Consent Order, it is found that Alvin Food Mart has failed to comply with the terms of the Memorandum of Agreement and Consent Order, disciplinary action shall be taken against Alvin Food Mart, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

8. Alvin Food Mart agrees to provide all active and settled tickets to the Commission or to an IGT representative on or before the date the suspension begins. It further agrees that these active tickets will settle on the date the suspension begins, and Alvin Food Mart will be charged for tickets sold on or before that date. Alvin Food Mart will be credited for any tickets that have been paid for in previous sweeps and that are returned to and received by the Commission on or before the date the suspension begins.

AGREED AS TO FORM AND SUBSTANCE:

Alvin FM LLC
d/b/a Alvin Food Mart #2

Texas Lottery Commission
Lottery Operations Division

By:



Nai L. Lo
Owner

7-30-20

DATE

By:



Ryan S. Mindell
Director

8-5-2020

DATE

Commission Order No. 21-0004

Date: OCTOBER 1, 2020

Case No. 2020-447

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
ALVIN FM LLC	§	
D/B/A ALVIN FOOD MART #2	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 176438	§	LOTTERY COMMISSION

CONSENT ORDER

NOW, THEREFORE, IT IS ORDERED by the Texas Lottery Commission (Commission), based on the above Agreed Findings of Fact, Conclusions of Law and Memorandum of Agreement, which are hereby adopted and incorporated by reference as if fully set out and separately stated herein, as follows:

(1) IT IS ORDERED by the Commission that, in lieu of revocation of Alvin FM LLC d/b/a Alvin Food Mart #2's (Alvin Food Mart) Texas Lottery Ticket Sales Agent License, the license is suspended for a period of ninety (90) consecutive days. The suspension period will begin within seven (7) days from the date this Consent Order is signed by the Commission. During the period of suspension, Alvin Food Mart shall not sell Texas Lottery tickets of any kind, shall not validate Texas Lottery tickets, and shall not pay lottery prizes to customers.

(2) IT IS FURTHER ORDERED by the Commission that, during the entire period of suspension, Alvin Food Mart shall post a notice of suspension, in the form and at the location prescribed by the Commission, visible to store customers, in the same area where Alvin Food Mart's Texas Lottery Ticket Sales Agent License is posted.

Commission Order No. 21-0004

Date: OCTOBER 1, 2020

(3) IT IS FURTHER ORDERED by the Commission that if, after a formal hearing on the sole issue of compliance with this Consent Order, it is found that Alvin Food Mart has failed to comply with the terms of this Order, disciplinary action shall be taken against Alvin Food Mart, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

(4) IT IS FURTHER ORDERED by the Commission that Alvin Food Mart shall provide all active and settled tickets to the Commission or to an IGT representative on or before the date the suspension begins, that these active tickets will settle on that date, and Alvin Food Mart will be charged for the tickets sold on or before that date. Alvin Food Mart will be credited for any tickets that have been paid for in previous sweeps and that are returned to and received by the Commission on or before the date the suspension begins.

Commission Order No. 21-0004

Date: OCTOBER 1, 2020

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 1ST day of OCTOBER, 2020.

Entered this 1ST day of OCTOBER, 2020.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 21-0005

Date: OCTOBER 1, 2020

DOCKET NOS. 362-20-3500 and 362-20-3501

TEXAS LOTTERY COMMISSION
Petitioner

v.

DINH T. CHAU
D/B/A TIMES MARKET #105
TICKET SALES AGENT LICENSE
NO. 180969

DINH T. CHAU
D/B/A TIMES MARKET #102
TICKET SALES AGENT LICENSE
NO. 180968
Respondents

§
§
§
§
§
§
§
§
§
§
§
§
§

BEFORE THE TEXAS

LOTTERY COMMISSION

ORDER OF THE COMMISSION

To: Dinh T. Chau
d/b/a Times Market #105
312 E. Travis St.
Port Lavaca, TX 77979

Dinh T. Chau
d/b/a Times Market #102
107 Seadrift St.
Port Lavaca, TX 77979

During an open meeting in Austin, Texas, the Texas Lottery Commission (Commission) finds that, after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge (ALJ) who made and filed a Proposal for Decision (PFD) containing the ALJ’s Findings of Fact and Conclusions of Law. The PFD was properly served, and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Commission, after review and due consideration of the PFD and exceptions and replies filed, if any, adopts the ALJ’s Findings of Fact and Conclusions of Law as if fully set out and

Commission Order No. 21-0005

Date: OCTOBER 1, 2020

separately stated herein. All proposed Findings of Fact and Conclusions of Law not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that the Texas Lottery Ticket Sales Agent Licenses of Dinh T. Chau d/b/a Times Market #105 and Dinh T. Chau d/b/a Times Market #102 are hereby revoked.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 1ST day of OCTOBER 2020.

Entered this 1ST day of OCTOBER 2020.

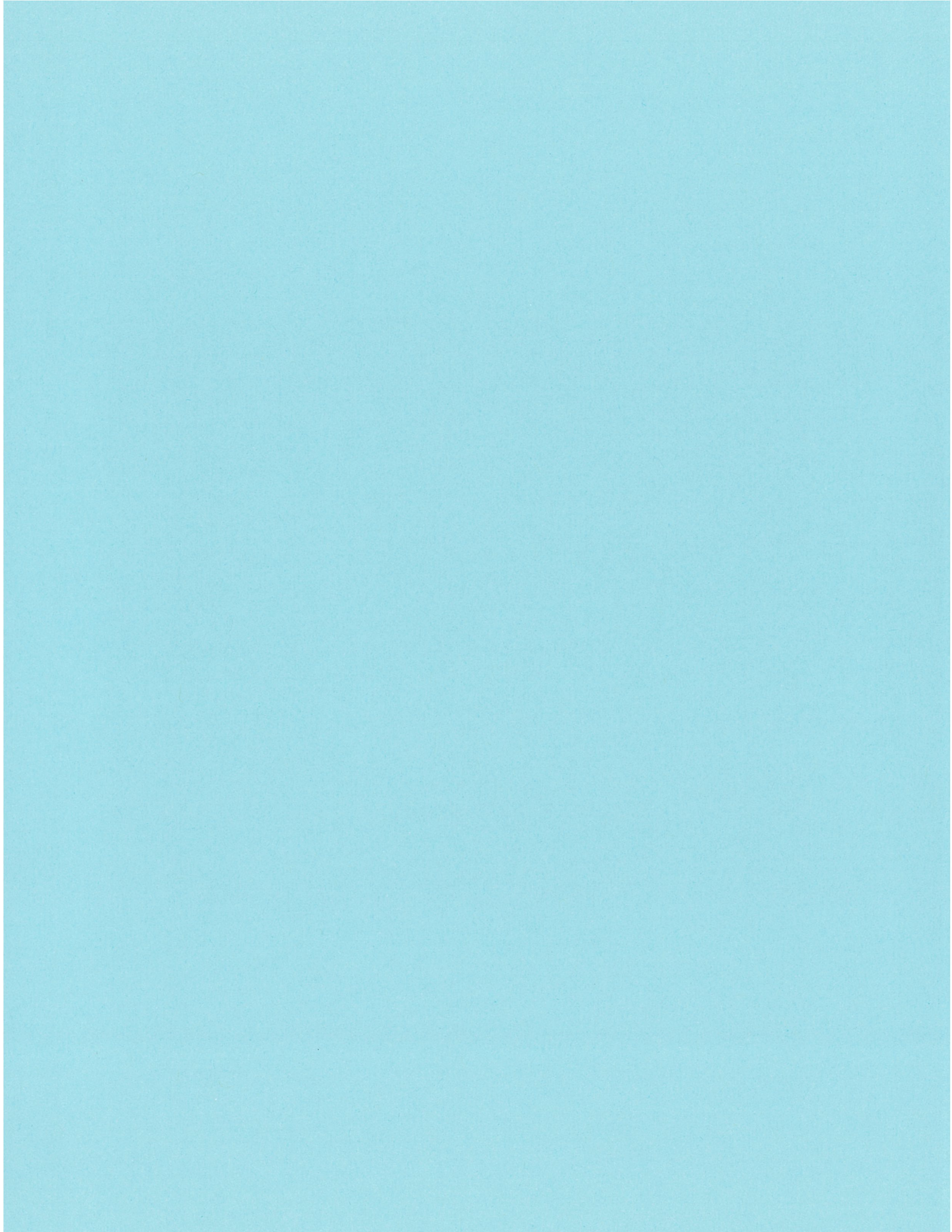
ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER





State Office of Administrative Hearings

Kristofer Monson
Chief Administrative Law Judge

September 1, 2020

Gary Grief
Executive Director
Texas Lottery Commission
611 East 6th Street
Austin, Texas 78701

VIA E-FILE TEXAS

RE: Docket Nos. 362-20-3500 and 362-20-3501; Texas Lottery Commission v. Dinh T. Chau d/b/a Times Market #105 and #102

Dear Mr. Grief:

Please find enclosed a Proposal for Decisions in these cases. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507, a SOAH rule that can be found at www.soah.texas.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Wiseman".

Daniel Wiseman
Administrative Law Judge

DW/nm

cc: Kristen Guthrie, Assistant Gen. Counsel, Tex. Lottery Comm'n, 611 E. 6th St., Austin, TX 78701 - **VIA E-FILE TEXAS**
Dinh T. Chau, d/b/a Times Market, 312 E. Travis St., Port Lavaca, TX 77979 - **VIA REGULAR MAIL**

SOAH DOCKET NO. 362-20-3500

TEXAS LOTTERY COMMISSION	§	BEFORE THE STATE OFFICE
	§	
v.	§	OF
	§	
DINH T. CHAU d/b/a TIMES MARKET	§	
# 105,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 362-20-3501

TEXAS LOTTERY COMMISSION	§	BEFORE THE STATE OFFICE
	§	
v.	§	OF
	§	
DINH T. CHAU d/b/a TIMES MARKET	§	
# 102,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

These joined proceedings involve two retailer locations with the same owner and arise out of the same set of facts. The staff (Staff) of the Texas Lottery Commission (Commission or TLC) seeks to revoke the Lottery Sales Agent License Nos. 180968 and 180969 held by Dinh T. Chau d/b/a Times Market #105 and Times Market #102 (jointly, Respondent) on two primary bases: the allegedly repeated violations of the provisions governing the TLC’s Retailer Cash Incentive Program (RCIP), and the claim that Respondent’s character detracts from the integrity, security, honesty, and fairness of the lottery’s operation, rendering him unfit for licensure. The Administrative Law Judge (ALJ) finds that Staff’s request should be granted and Respondent’s licenses Nos. 180968 and 180969 be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Jurisdiction and notice were not contested and are discussed only in the findings of fact and conclusions of law. ALJ Daniel Wiseman convened the telephonic hearing on July 2, 2020.

Kristen Guthrie, Assistant General Counsel, appeared on behalf of Staff. Respondent represented himself. The evidentiary record closed the same day.

II. DISCUSSION

A. Legal Standards

The Commission is authorized to take disciplinary action against a sales agent who has violated the State Lottery Act, found at Texas Government Code chapter 466, or the Commission's rules.¹ Among the Commission's disciplinary powers is the authority to revoke or suspend a license,² or to impose lesser sanctions, including the issuance of a warning letter or the imposition of administrative penalties.³ Staff bears the burden of proof to show by a preponderance of the evidence that the alleged violations occurred, while, if the Staff has met that burden, the Respondent bears the burden of demonstrating why the licenses should not be revoked.⁴

In addition, the following provisions govern the outcome of this proceeding:

- Texas Government Code § 466.151(e), which states:
The director may issue a license to a person only if the director finds that the person's experience, character, and general fitness are such that the person's participation as a sales agent will not detract from the integrity, security, honesty, and fairness of the operation of the lottery.
- Texas Government Code § 466.155(a)(5), which states in pertinent part:
 - (a) After a hearing, the director shall deny an application for a license or the [C]ommission shall suspend or revoke a license if the director or [C]ommission, as applicable, finds that the applicant or sales agent:

¹ The Commission's rules are located at 16 Texas Administrative Code (TAC) chapters 401 through 403.

² Tex. Gov't Code § 466.155(a).

³ 16 TAC § 401.160.

⁴ See 1 TAC § 155.427 (SOAH rule stating that after considering referring agency's provisions and policy, burden of proof is allocated according to various factors including which party is seeking to alter the status quo, the relative status of the parties, and whether a party would be required to prove a negative); Tex. Gov't Code § § 466.155(c).

...
(5) has violated this chapter or a rule adopted under this chapter.

and

- 16 Texas Administrative Code § 401.158, which states, in pertinent parts:
 - (a) The [C]ommission may suspend or revoke any license issued under this subchapter if the [C]ommission finds that any factor listed as grounds for denial of a license under § 401.153(b) of this title (relating to Qualifications for License) or any factor listed in subsection (b) of this section apply to the license, The [C]ommission shall inform the sales agent in writing of the decision to suspend or revoke a license for any of these reasons.
 - (b) Without limiting the [C]ommission's ability to consider factors listed in § 401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the [C]ommission may also suspend or revoke a license for reasons including, but not limited to, any of the following:
 - ...
 - (4) licensee fails to follow instructions and procedures for the conduct of any particular lottery game, lottery special event or promotion;
 - ...
 - (8) licensee violates any directive or instruction issued by the director of the Lottery Operations Division;
 - (9) licensee violates any express term or condition of its license not specifically set forth in this subchapter.

B. Allegations

First, Staff contends that Respondent violated numerous interrelated statutes, rules, and license provisions, including those listed above,⁵ related to the handling of lottery tickets at the two retail sales locations in order to improperly maximize the cash incentive received under the RCIP.

⁵ Staff also contends that Respondent violated the terms of the licenses themselves, along with other overlapping rules. The ALJ does not find it necessary to reach every allegation, as the violations described herein are based on the same conduct and are sufficient to support revocation. *See, e.g.*, Staff Exs. 2 and B (notices of hearing).

In short, Staff alleges that Respondent manipulated the RCIP incentive program by improperly “activating” or “settling” tickets at these locations,⁶ which increased his RCIP payout while not actually offering them for sale to the public, thus undermining the RCIP’s goal of increasing ticket sales. In addition, Staff alleges that Respondent moved tickets allocated to one retail sales location to another in violation of the RCIP rules. Staff contends that despite repeated warnings these practices continued until Respondent was eventually barred from further participation in the RCIP.⁷

Second, Staff argues that this pattern of repeated violations demonstrates Respondent’s unfitness for licensure as a sales agent for the Commission. Under Texas Government Code § 466.151(e), only a person whose character will not detract from the integrity, security, honesty, and fairness of the operation of the lottery may hold a license. According to Staff, Respondent’s character detracts from these values such that his licenses must be revoked.

C. Evidence

Staff offered a total of 15 exhibits,⁸ all of which were admitted. In addition, Staff offered the testimony of Michelle Young, Retail Distribution and Special Projects Coordinator for the Commission. Respondent testified on his own behalf and offered no documentary evidence.

1. Staff’s Evidence

Ms. Young testified that the Commission first became concerned in December 2019 when it noticed irregularities in scratch ticket pack settlements and returns related to the RCIP at

⁶ “Settled” or “activated” tickets typically cannot be returned to the Commission and usually indicate that they are actively being sold to the public.

⁷ The record indicates that the RCIP is a recurring program and is identified by number relating to the year the particular RCIP was in effect. This distinction is not relevant to the analysis here. Respondent is currently disqualified from participating in all future RCIP programs.

⁸ Staff Exhibits A-G relate to Docket No. 362-20-3500 (Times Market No. #105), and Staff Exhibits 1-8 relate to Docket No. 362-20-3501 (Times Market No. #102).

Respondent's retail locations, which she stated could indicate manipulation of the RCIP in order to increase Respondent's profits in violation of RCIP and Commission rules.⁹ Ms. Young explained that the RCIP is a yearly program intended to increase ticket sales by incentivizing retailers with cash rewards for exceeding a sales target derived from prior years' ticket sales. According to Ms. Young, the Commission calculated retailers' sales using the number of "settled" or "activated" packs at the location. However, settling or activating packs is within the control of the retailer and is intended to but does not necessarily reflect that tickets have actually been sold. Moreover, she testified, the Commission will effectively issue refunds to retailers for settled or activated packs for which there have been few ticket sales. Thus, by activating or settling packs, a retailer could obtain cash incentives under the RCIP without actually selling many tickets, undermining the goal of the RCIP and depriving the state of the revenue generated from such sales.¹⁰ The RCIP rules are published in flyers distributed to the retailers and note that the program is based on individual retail locations and that the Commission may disqualify retailers if irregularities in pack settlements are observed.¹¹

Ms. Young testified that on December 6, 2019, a Commission vendor employee visited Times Market #105 and returned 26 partial packs of scratch tickets, most for the same game, that were in a settled status. She testified that some tickets had been sold from these packs, but the packs were not being offered for sale to the public at the time of the visit, which she stated indicated manipulation of packs in order to maximize the RCIP bonus. She further stated that the most recent Inventory Sales Summary Report from January 2, 2020, identified 250 packs in Times Market #105's inventory, including 105 packs in activated or settled status. However, Times Market #105 had only 59 scratch ticket facings—the slots where scratch tickets are displayed for sale to the public—again indicating manipulation of packs in order to maximize RCIP payments, according to Ms. Young.¹²

⁹ See Tr. at 26:35 *et seq.* (Young Direct).

¹⁰ See Tr. at 26:50 *et seq.*; *id.* at 31:00 *et seq.*

¹¹ Staff Exs. 6 & F.

¹² See Tr. at 27:00 *et seq.*

In addition, Ms. Young testified that, as set out in Staff Exhibits 6 and F, the Commission's Inventory Sales Summary Report (dated January 2, 2020) identified 250 packs in Times Market #105's inventory, including 105 packs in activated or settled status. However, Times Market #105 had only 59 scratch ticket facings, indicating possible manipulation of packs in order to maximize RCIP payments.

Also on December 6, 2019, a Commission vendor employee visited Times Market #102, Ms. Young testified. As with the other location, numerous packs were inactivated or settled status (in this case 155) but Times Market #102 had only 60 facings, again indicating to Ms. Young that Respondent manipulated the number of packs activated or settled in order to maximize RCIP payments.¹³ She further testified that the January 2, 2020 Inventory Sales Summary Report mentioned above identified 324 packs in Times Market #102's inventory, including 155 packs in activated or settled status. However, Times Market #102 had only 60 scratch ticket facings, indicating, according to Ms. Young, possible manipulation of packs sold in order to maximize RCIP payments.

Ms. Young also testified that, regarding the documentary evidence showing pack returns for retailers, Respondent had a disproportionate number of activated and returned packs compared to Respondent's actual sales and sales capacity.¹⁴ Ultimately, according to Ms. Young, the evidence shows that Respondent received \$196,870 in credit under the 2019 RCIP.¹⁵

Further, Ms. Young testified that because the RCIP sales target is specific to a single retail location, it is subject to manipulation if a retailer moves tickets allocated to one location for sale at another, artificially lowering the ticket sales at one location (resulting in a lower sales target the next year) and inflating the sales at the other location (resulting in a larger cash incentive for that year).

¹³ *Id.*

¹⁴ *Id.* at 42:00; Staff Exs. 6 & F.

¹⁵ Tr. at 44:00; Staff Exs. 6 & F.

Ms. Young testified that in 2016 representatives from the Commission's vendor sales staff observed Respondent or his employees transferring scratch ticket game packs from one retail location to another and issued warnings that this practice was not permissible under RCIP and Commission rules.¹⁶ Nevertheless, Ms. Young testified, Respondent or his employees were observed again transferring tickets from one location to another on additional occasions in 2016. Ms. Young testified that Respondent was disqualified from the next year's RCIP program as a result, and the Commission issued warning letters concerning compliance with the RCIP program.¹⁷

Ms. Young noted that misconduct took place at both of Respondent's locations, and continued despite repeated written warnings from Staff, some of which were delivered to Respondent's wife or other employees. Ms. Young testified that Respondent was warned over twenty times concerning his noncompliance.¹⁸

On March 4, 2020, Ms. Young testified that the Commission permanently disqualified Respondent from participating in the RCIP, and on May 14, 2020, initiated revocation proceedings.¹⁹ Ms. Young stated that revocation was appropriate in this instance because of the importance of maintaining the integrity of the lottery as an important source of revenue for the state. She explained that Respondent's alleged violations undermined the integrity of the lottery and resulted in lost revenue for the state, and by not offering tickets for sale also potentially deprived lottery players of winning tickets. Moreover, Ms. Young testified that Respondent had never sought additional information or asked for educational materials concerning the RCIP program in its rules that were available to retail sales agents.²⁰

¹⁶ See, e.g., Staff Ex. F.

¹⁷ See also Staff Exs. 3 & C; 4 & D.

¹⁸ See Staff Ex. F at Bates 151.

¹⁹ Staff Exs. E & 5.

²⁰ See Tr. at 62:00 *et seq.*; 64:22.

She argued that even though Respondent is now excluded from the RCIP, his character renders him unfit for licensure under Texas Government Code § 466.151(e) because Respondent's past practices demonstrate that he cannot be trusted with future lottery programs.²¹

2. Respondent's Evidence

Respondent testified on his own behalf.²² Respondent did not deny the actions giving rise to the alleged violations but testified that he was not aware that these actions were improper under the RCIP program. He contended that he never received the warnings testified to by Ms. Young and documented in Staff's evidence, though he admitted that his employees may have received the warnings. He generally acknowledged that as license holder, he is ultimately responsible for compliance. He stated that he is a hard-working man who immigrated to this country and is striving to take advantage of the economic opportunities here. He noted that even his teenage daughter contributes to the upkeep of the stores. In addition, he cited lack of storage capacity at the locations as the reason for the transfer of tickets from one location to another. In sum, with respect to the alleged violations, Respondent pleaded ignorance and practical necessity. However, on cross-examination Respondent admitted that he never sought any additional training available from the Commission and, again, acknowledged ultimate responsibility as license holder.

D. Parties' Arguments and ALJ's Analysis

1. Did Respondent Violate the RCIP Rules and Related Regulations?

Staff demonstrated by a preponderance of the evidence that Respondent violated the RCIP and Commission rules, including manipulating packs in violation of 16 TAC §§ 401.158(b)(4), (8), (9); and 401.366.

²¹ Moreover, the evidence showed that the Commission has sanctioned Respondent for violations related to the use of lottery tickets in connection with eight-liners. As that matter is apparently still subject to appeal, the ALJ did not base his decision on that violation, which related only to one of the retail locations.

²² See Tr. at 74:10 *et seq.* (Chau Direct and Cross).

His testimony that he was unaware that his actions were improper is not credible—as he is a highly educated person, a mechanical engineer—nor is his alleged ignorance of the rules. Respondent failed to explain how he could remain ignorant of the rules after the many warnings he and his employees received regarding his violations, as set out in the record. Respondent also admitted that he transferred tickets between locations, in violation of 16 TAC §§ 401.158(b)(4) and (8). The ALJ finds that the preponderance of the evidence shows that Respondent violated the rules of the RCIP, and thus Texas Government Code § 466.155(a)'s prohibition on rule violations, and 16 TAC §§ 401.158(b)(4), (8), and (9).

2. Does Respondent Have the Experience, Character, and General Fitness Required by Texas Government Code § 466.151(e)?

Staff's argument that—notwithstanding his exclusion from the RCIP, Respondent still presents a danger to the security and integrity of the lottery due to his lack of experience, character, and general fitness under Texas Government Code § 466.151(e)—is a challenging one. It is impossible to assess such qualities over the scope of a single hearing. Indeed, as a whole, Respondent appears to have experience, character, and general fitness as shown by his hard work and education as mechanical engineer, and his efforts to secure a better future for his family. But the statute is limited to the narrow question of what the evidence shows and how it pertains to the specific issue of Respondent's ability to properly represent the lottery. Respondent's—at best—willful ignorance of the rules of the RCIP and other Commission regulations and his failure to acknowledge any wrongdoing constitute sufficient evidence that he does not meet the standard set out in § 466.151(e). The evidence that over twenty warnings were insufficient to ensure compliance from Respondent demonstrate that it is unlikely he will abide by the rules in the future, especially given his lack of control over his limited staff and his demonstrated inability to properly oversee his employees' compliance. Respondent offered no plan or course of action that would suggest similar violations would not occur in another lottery program. For those reasons, the ALJ finds that Texas Government Code § 466.151(e) may be used as a basis for revocation of Respondent's licenses.

For the reasons stated above, the ALJ finds that the preponderant evidence demonstrates that Respondent committed the violations described above and that Respondent failed to show why the licenses should not be revoked. Accordingly, the ALJ recommends that the Lottery Sales Agent licenses held by Respondent be revoked, and in support of this recommendation makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. Dinh T. Chau d/b/a Times Market #105 and Times Market #102 (jointly, Respondent) holds Texas Lottery Sales Agent License Nos. 180968 and 180969 issued by the Texas Lottery Commission (Commission).
2. In 2016, Commission vendor sales staff notified Respondent or his employees that engaging in selling scratch ticket game packs at a location other than the location where the packs were assigned and activated, in order to maximize his bonus under the Commission's Retail Cash Incentive Program (RCIP), was in violation of 16 Texas Administrative Code § 401.158(b)(4) and (8).
3. The RCIP is a yearly program intended to increase ticket sales by incentivizing retailers with cash rewards for exceeding a sales target derived from prior years' ticket sales.
4. The RCIP rules prohibit irregularities in settlements and the transfer of tickets allocated to one retail location to another, which would result in skewed sales figures and sales targets under the RCIP.
5. In 2016, representatives from the Commission's vendor sales staff observed Respondent or his employees transferring scratch ticket game packs from one retail location to another and issued warnings that this practice was not permissible under RCIP and Commission rules.
6. After Respondent or his employees were again observed transferring tickets between retail sales locations, on November 23, 2016, the Commission issued to Respondent a Notice of Disqualification from the following year's RCIP.
7. On November 30, 2016, the Commission issued warning letters to Respondent regarding RCIP eligibility requirements.
8. On December 4, 2019, the Commission identified irregularities in scratch ticket game pack settlements and returns at Respondent's retail locations, indicating possible manipulation of packs in order to maximize the RCIP.

9. Because the awards are calculated based on ticket settlements, which are within the control of the retailer, rather than ticket sales, the RCIP is subject to manipulation if a retailer settles ticket packs without offering them for sale.
10. On December 6, 2019, a Commission vendor employee visited Times Market #105 and returned 26 partial packs of scratch tickets, most for the same game, that were in a settled status. Some tickets had been sold from these packs, but they were not being offered for sale to the public at the time of the visit, indicating possible manipulation of packs in order to maximize the RCIP bonus.
11. The Commission's Inventory Sales Summary Report (dated January 2, 2020) identified 250 packs in Times Market #105's inventory, including 105 packs in activated or settled status. However, Times Market #105 had only 59 scratch ticket facings, indicating possible manipulation of packs in order to maximize RCIP payments.
12. On December 6, 2019, a Commission vendor employee visited Times Market #102 and returned 26 partial packs of scratch tickets, most for the same game, that were in a settled status. Some tickets had been sold from these packs, but they were not being offered for sale to the public at the time of the visit, indicating possible manipulation of packs in order to maximize the RCIP bonus.
13. The Commission's Inventory Sales Summary Report from January 2, 2020, identified 324 packs in Times Market #102's inventory, including 155 packs in activated or settled status. However, Times Market #102 had only 60 scratch ticket facings, indicating possible manipulation of packs sold in order to maximize RCIP payments.
14. Respondent or his employees should have been aware that such conduct violated Commission and RCIP rules.
15. Respondent never sought additional training regarding the RCIP program beyond that which was mandated.
16. On March 4, 2020, Commission Staff (Staff) initiated proceedings to revoke the licenses held by Respondent.
17. On May 14, 2020, Staff mailed to Respondent notices of hearing on the proposed revocations. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.

18. Administrative Law Judge (ALJ) Daniel Wiseman convened a telephonic hearing on July 2, 2020. Kristen Guthrie, Assistant General Counsel, appeared on behalf of Staff. Respondent represented himself. The evidentiary record closed the same day.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex. Gov't Code § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, as provided by Texas Government Code ch. 2003. Tex. Gov't Code § 466.155(b-1).
3. Timely and adequate notice of the hearing was provided in accordance with Texas Government Code chapters 466 and 2001.
4. Staff demonstrated by a preponderance of the evidence that Respondent violated 16 Texas Administrative Code §§ 401.158(b)(4), (8), and (9) by failing to follow instructions and procedures for the conduct of any particular lottery game, lottery special event or promotion by activating or settling tickets without offering them for sale and by transferring tickets between retail sales locations.
5. Respondent's failure to heed numerous warnings regarding these violations, his unconvincing excuses for those violations, and his inability to properly oversee his employees demonstrate that his participation as a sales agent will detract from the integrity, security, honesty, and fairness of the operation of the lottery under Texas Government Code § 466.151(e).
6. Respondent did not meet his burden to show that his licenses should not be revoked. Tex. Gov't Code § 466.155(c).
7. Texas Government Code § 466.155(a)(5) allows the Commission to revoke Respondent's licensure as a sales agent because he has violated that chapter of the Government Code or a rule adopted thereunder.
8. The lottery sales agent's licenses held by Respondent should be revoked.

SIGNED September 1, 2020.



DANIEL WISEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS